

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Super Mexi Corporation</b>	:	
<b>-vs-</b>	:	
<b>Commonwealth Edison Company</b>	:	
	:	<b>13-0542</b>
<b>Complaint as to false accusations</b>	:	
<b>of tampering with meters and</b>	:	
<b>billing/charges in Chicago, Illinois</b>	:	

**RESPONDENT’S INITIAL BRIEF**

Now comes the Respondent, Commonwealth Edison Company (“Respondent” or “ComEd”), by and through its attorney, Rebecca A. Graham, and files this initial brief, and in support thereof states:

**BACKGROUND**

On September 24, 2013, Sergio Garcia (substituted as the party of record on April 3 by Super Mexi Corporation, hereinafter “Complainant”) filed a formal complaint (“Complaint”) with the Illinois Commerce Commission (“Commission”) against ComEd alleging that ComEd falsely accused him of tampering and for “wrongful charges” on his account at 9029 S. Commercial Avenue, Chicago, IL (“Property”).

Complainant retained counsel, Daniel J. Rice, who filed his appearance on October 15, 2013. On March 3, 2014 Mr. Rice filed a Motion to Withdraw, which was granted. On May 9, 2014, Mosa A. Elmosa filed his appearance as Complainant’s counsel.

The Administrative Law Judge (“ALJ”) set this matter for evidentiary hearing on December 15, 2014. On December 15, 2014, ComEd came to the evidentiary hearing with four witnesses. At that time, Mr. Elmosa informed the ALJ that he was unable to go forward with his case because his witness Paul Hansen, an electrician from EFI Global, was unable to appear. Mr. Elmosa did not notify ComEd or the ALJ that his electrician was unavailable until the day of the

hearing. (Tr. at 88). Rather than continue the matter and force ComEd's four witnesses to return to the Commission a second time for hearing, the ALJ permitted ComEd to go forward with its testimony despite the absence of Complainant's witnesses. (Tr. at 88-91).

ComEd's four employee witnesses – Walter McCann, Senior Energy Technician; Demon Page, Senior Energy Technician; Frank Lopez, Meter Mechanic Special; and Alexis Bullard, Senior Business Analyst in Customer Relations – testified and were cross-examined on December 15, 2014.

Pursuant to notice, the ALJ set February 19, 2015 for Complainant to present its case. On February 19, 2015, Mr. Elmosa informed the ALJ that his electrician was unable to make the hearing on time, and therefore, he needed to reschedule the hearing. A new date was set for April 1, 2015 for a second evidentiary hearing.

At the evidentiary hearing on April 1, 2015, ComEd recalled Mr. Lopez in order to clarify some questions the ALJ had regarding the meter. Complainant then presented two witnesses: Paul Hansen and Saed Mohamad. ComEd had one rebuttal witness, Andrew Morris, Senior Engineer in the Distribution Standards Department. At the conclusion of the hearing, the ALJ marked the record "Heard and Taken."

ComEd suggested that the parties file closing briefs, and the ALJ agreed. The due date for the briefs and reply briefs was set for June 1, 2015 and June 22, 2015, respectively (Tr. at 427).

### **SUMMARY OF THE ARGUMENT**

Complainant has failed to prove its case. Complainant alleged that ComEd wrongfully charged it for service at the Property and that the meter was not accurately read. (Complaint at 1). Complainant has failed to provide any evidence that it was wrongfully charged for service or that any meter at the Property was not read properly. Complainant's entire case in chief is based on

speculation and hearsay.

By contrast, ComEd's uncontroverted evidence shows:

1. In December, 2012, the meter at the Property had a jumper cable between the A and C phase (Tr. at 341-342);
2. On February 27, 2013, Complainant was properly rebilled for previously unbilled service from 3/23/12 through 3/25/13 due to the tampering (Tr. at 205);
3. In June of 2014, the meter at the Property was exchanged because it was not showing forward rotation (Tr. at 151); and
4. On June 28, 2014, ComEd's Meter Service Special discovered that the meter was missing its T-Bar seal and that the meter's current sensor was unplugged from the circuit board, indicating tampering (Tr. at 179-180).

ComEd proved by a preponderance of the evidence that there was tampering with Complainant's meter and that Complainant benefitted from the tampering. ComEd proved that the back-billing for the tampering was correct.

Complainant, however, failed to meet its burden of proof in this case. Therefore, the Commission should deny the Complaint in its entirety.

### **COMPLAINANT'S TESTIMONY**

#### **Paul Hansen**

Mr. Hansen testified that he works for EFI Global doing forensic electrical engineering. He testified that he visited the Property on June 9, 2014 and met with various employees of Complainant and two ComEd employees. He testified that one of the ComEd employees was Mr. McCann, who found the lifted wires and jumpers in the meter compartment. He testified that there was no indication of tampering when he visited the Property on June 9, 2014. (Tr. at 313-318). He

testified about a graph he made from ComEd bills for the Property by taking the kilowatt-hour monthly usage and dividing it by the number of days in the month to get the daily kilowatt-hour consumption (marked as Complainant's Exhibit 2). (Tr. at 326-330).

According to Mr. Hansen: "Anybody who knows anything about the electric industry and electrical power consumption knows that Chicago is a summer peak place." (Tr. at 328). Mr. Hansen testified that his graph indicates that Complainant was billed for more usage in January of 2013 than August of 2011 "which makes absolutely no sense." (Tr. at 330). He stated that the bills from April 2012 through December 2012 were estimated bills, and he said there was no explanation for the bills going up in April of 2012. He testified that there is no explanation for why the consumption should be so high. (Tr. at 333-334). He stated that his graph shows that between April of 2012 and May of 2013, there is no summer peak and winter low, which, he claimed, would be "a typical usage pattern in the Chicago area." According to Mr. Hansen, no new equipment was installed at the store, and the hours did not change. He claimed that there had to be something wrong with the meter or the hook-up. (Tr. at 336-337).

Mr. Hansen also posited that there could be "a problem with circulating ground currents." He testified that "there is anecdotal evidence that circulating ground currents in the water piping system can cause abnormalities in the meter readings." Mr. Hansen finished his direct testimony by stating that the Property's high usage is the result of "either a problem with the meter or it's some systemic problem that's yet to be identified and addressed in the literature." (Tr. at 338-339).

On cross-examination, Mr. Hansen admitted that he had never been to the Property before June of 2014 and that he has not been to the Property after June of 2014. (Tr. at 340). He admitted that he was not at the Property in 2012 and has no first-hand knowledge of whether there was a jumper between the A and C phase of the meter. He admitted that he has never investigated a meter

tampering case. He further admitted that he is not an expert on ComEd meters or billing and that he has never examined how ComEd back-bills customers. (Tr. at 341-342). He stated that his conclusions about typical usage patterns in Chicago are based on “common knowledge” for an “engineer familiar with the power industry.” (Tr. at 342). Mr. Hansen admitted that since he “was never given data prior to April 2011” he “could not prepare a valid statistical analysis.” (Tr. at 343). He admitted that at the time that he created his graph, he did not know that the appearance of flattened usage between April 2012 and May 2013 was due to ComEd’s back-billing, but he had since learned that the bills were estimated. (Tr. at 344).

Mr. Hansen agreed that his ultimate proposal is that ComEd pay for an experiment to prove or disprove his theory as to why the meters at the Property are recording the way they are – the theory about circulating ground currents. (Tr. at 346-347). He admitted that he had no opportunity to make an independent evaluation as to what was going on at the store in the years prior to his visit in June of 2014. (Tr. at 349).

### **Saed Mohamad**

Mr. Mohamad was called as Complainant’s next witness. He testified that he is the General Manager of Complainant’s store. (Tr. at 357-359).

Mr. Mohamad first testified that the store removed a 12-door cooler with four compressors in January of 2013. (Tr. at 362). Later in his testimony, after Complainant’s counsel stated that the witness had his dates wrong, Mr. Mohamad stated that the cooler was removed in August or November of 2011. Then, he stated that the cooler was removed between August and November of 2012. (Tr. at 385-388).

Mr. Mohamad testified that he received a bill with a letter charging Complainant “\$500 for miscellaneous” in February or March of 2013. He stated that he called ComEd and was told that

the \$500 charge was for tampering. He stated that this was the first time he was aware of any allegation of tampering. (Tr. at 364-365). Later in his testimony, after Complainant's counsel stated that the witness had his dates wrong, Mr. Mohamad stated that he received the bill and letter with the tampering charge in May of 2013. (Tr. at 383). After further questioning, he stated that he was first made aware of the tampering in April of 2012. Then he stated that he received the bill and letter with the tampering charge in April or May of 2012. (Tr. at 383-384).

At various times during his testimony, Mr. Mohamad stated that he did not receive bills in March, April, and May of 2013 (Tr. at 378), May or June of 2013 (Tr. at 390), and during the four or five months after the Complaint was filed in September of 2013 (Tr. at 390-391). He stated that he has been paying his bills for a year and a half or two years. Then he testified that he is not familiar with the payment of the bills because a person named Connie was making them. (Tr. at 391-392). Later, he stated that both he and Connie were making the payments. (Tr. at 399).

Mr. Mohamad testified to five bills he received from ComEd in October and November of 2014. (Tr. at 393-405, Complainant's Exhibits 3-7). He stated that the Commission told him that "they're investigating why these billings are everywhere." (Tr. at 405).

On cross-examination, Mr. Mohamad admitted that he did not have a copy of the bill that shows the \$500 tampering charge with him in the hearing room. (Tr. at 406). He admitted that the five ComEd bills he testified to were bills that were issued subsequent to the filing of the Complaint. (Tr. at 406-407).

## **RESPONDENT'S TESTIMONY**

### **Walter H. McCann**

ComEd's witness, Mr. McCann, testified that he is a Senior Energy Technician with the company, a position he has held for 19 years. He testified that he has been with ComEd for thirty-

five and a half years, holding various positions including Meter Reader, Junior Technician, and Senior Energy Technician. He stated that his duties as a Senior Energy Technician include disconnecting and restoring services, meter testing, exchanging meters, and inspecting services. (Tr. at 94-95).

Mr. McCann testified that he went to the Property on December 17, 2012. He stated that while there, he took the cover off of the fitting of the meter and found the C phase on the current side disconnected and a jumper between the A and C current phase. He stated that the meter was running backward. (Tr. at 96). He stated that the presence of the jumper and the meter running backward indicated tampering with the meter. He testified that he removed the jumper and replaced the C back to the switches, and the meter ran forward after that. (Tr. at 97-98). He testified that when he was back at the Property on April 17, 2013 and again on June 9, 2014, there was no indication of tampering. (Tr. at 101-102). Mr. McCann's testimony was supported by ComEd's business records, which were entered into evidence as Group ComEd Exhibit 1. (Tr. at 146-148).

On cross-examination, Mr. McCann stated that the seal on the meter was broken when he visited the Property in 2012. (Tr. at 117). He stated that he knew that the meter was running backward because on the display there is an arrow, and the arrow was facing the opposite direction. (Tr. at 119). He testified that the meter with the meter number ending 1428 is a 3-phase meter that should handle all of the load for the store and the meter with the meter number ending 7492 is the single-phase meter for the emergency service for the store. (Tr. at 134). He stated that the 3-phase meter with the meter number ending 1428 was the meter that had the jumper cables on it in 2012. (Tr. at 135).

In response to the ALJ's questions, Mr. McCann testified that the jumper cable is a wire that was placed on the switches – called "bayonets" – below the meter. Mr. McCann stated that

the jumper cable between the A and C phase caused the meter with the meter number ending 1428 to run backward. (Tr. at 138-143).

### **Demon Page**

Mr. Page testified that he is a Senior Energy Technician with ComEd, a position he has held since 2010. He testified that he went to the Property on June 4, 2014 to verify the condition of the meter with the meter number ending 1428. He testified that he observed that there was no forward rotation on that meter on that day. He stated that when there is no forward rotation on a meter, he is to put load on the meter, which he did. When Mr. Page put the load on the meter, there was still no forward rotation. He stated that he then exchanged the meter with the meter number ending 1428 with a new meter. (Tr. at 149-152). Mr. Page's testimony was supported by ComEd's business records, which were entered into evidence as ComEd Exhibit 2. (Tr. at 176).

On cross-examination, Mr. Page testified that he did not observe evidence of tampering when he was at the Property on June 4, 2014. He stated that the meter with the meter number ending 1428 was not recording usage at that time. (Tr. at 160-161).

### **Frank Lopez**

Frank Lopez testified that he has been a Meter Mechanic Special with ComEd for four years. He stated that as a Meter Mechanic Special, he tests and programs meters, including testing for ICC complaints, CUB complaints, and customer complaints. (Tr. at 177-178).

Mr. Lopez testified about the meter with the meter number ending 1428, which he brought to the hearing. The meter came to his shop in a locked yellow basket. He testified that he attempted to test the meter but was unable to because the current sensor was unplugged from the circuit board on the meter. He testified that without the current sensor being plugged in, the meter will not show kilowatt usage. He stated that the T-Bar seal on the meter was removed. He stated that the T-bar



seal missing and the unplugged current sensor indicate that the meter had been tampered with because someone had to actually open the meter to unplug the current sensor. Because the current sensor was unplugged, he was unable to test the meter. (Tr. at 178-182). Mr. Lopez's testimony was supported by ComEd's business records, which were entered into evidence as ComEd Exhibit 3. (Tr. at 195).

On cross-examination, Mr. Lopez stated that he received the meter on June 28, 2014. (Tr. at 190). He stated that the tech is supposed to bring him the meter exactly as it is found in the store. (Tr. at 193).

Mr. Lopez was recalled as a witness on April 1, 2015 to clarify some questions the ALJ had about the meter. (Tr. at 264-265). Mr. Lopez took pictures of the meter with the meter number ending 1428, which he brought back with him to the hearing room, in order to provide the ALJ with exhibits for the record showing that the T-Bar seal is missing. (Tr. at 273-274).

On cross-examination, Mr. Lopez stated that the T-Bar seal is supposed to stay on the meter for the life of the meter to prevent anyone from accessing the inner part of the meter. (Tr. at 280-281). He testified that the T-Bar seal can be removed with a tool and the cover of the meter can be removed while it remains in the fitting. (Tr. at 281).

The ALJ stated that he needed either the actual meter or the photographs in order to have something to refer to when reviewing the record. (Tr. at 287). Mr. Lopez took photographs of the meter with the meter number ending 1428 to show that the T-Bar seal was missing and he took photographs of a different meter that has the T-Bar seal intact for comparison purposes. (Tr. at 283-291). The photographs of the meter with the meter number ending 1428 were entered into evidence as ComEd Exhibit 6. The photographs of a meter with the T-Bar seal intact for comparison purposes was entered into evidence as ComEd Exhibit 7. (Tr. at 292-293).

On further cross-examination, Mr. Lopez stated that the card attached to the meter with the meter number ending 1428 had his notes on it, which he read: "T-Bar seal missing, current sensor was unplugged from the meter circuit board resulting in lack of registration." (Tr. at 301). The meter with the meter number ending 1428 was moved into evidence as ComEd Exhibit 8. (Tr. at 306). The green tab attached to the meter was moved into evidence as ComEd Exhibit 9. (Tr. at 309). ComEd Exhibits 6-9 were entered into evidence. (Tr. at 310).

**Alexis Bullard**

Ms. Bullard testified that she has worked for ComEd for 26 years and has been a Senior Business Analyst in the Customer Relations Department for three years. As part of her duties as a Senior Business Analyst, she handles informal customer complaints, which requires her to analyze customer account information and investigate their concerns regarding a variety of issues from high billing, transfer debits, to tampering charges. She stated that she reviews billing histories, meter reading histories, account adjustments, and customer contacts. (Tr. at 196-197).

Ms. Bullard testified that she was familiar with Complainant's account. She testified to ComEd Exhibit 4, which is Complainant's account billing summary for service at the Property. She stated that the current balance on Complainant's account was \$73,522.66. (Tr. at 197-198).

Ms. Bullard also testified to ComEd Exhibit 5, which is Complainant's account history that goes back to July 9, 2013. She stated that on January 28, 2013, a Revenue Protection Tampering Fee of \$545.23 was assessed. She testified that ComEd rebilled the service based on usage recorded on the meter after the jumpers were removed and based on previous usage. She stated that the rebill period went back to March of 2012 when the usage dropped significantly, which indicated that the tampering began. The rebill appears on the account history as "Canceled Electric Service," indicating that the original bills were cancelled and new bills were established based upon a review

of the account and the usage that would have occurred had there not been tampering. She testified that the rebilling was consistent with subsequent billing on the account. (Tr. at 199-202).

In response to the ALJ's questions, Ms. Bullard testified that the rebilling went from 3/23/12 through 3/25/13. The rebilling process occurred on February 27, 2013. (Tr. at 204-205).

On cross-examination, Ms. Bullard responded to questions about the kilowatt hour usage each month. (Tr. at 210-216). Ms. Bullard stated that the difference in usage on Complainant's account from 2011 to 2013 is normal for a business. On redirect, Ms. Bullard testified that the kilowatt hour usage in 2011, 2012, and 2013 was based on actual meter readings. (Tr. at 216-217).

### **RESPONDENT'S REBUTTAL**

ComEd called Andrew Morris as a rebuttal witness. He testified that he is a Senior Engineer in the Distribution Standards Department at ComEd. He testified that he has worked at ComEd for fifteen years and has been in his current position for seven years. He stated that he has a bachelor's of science in electrical engineering and a master's of science in electrical engineering from the Illinois Institute of Technology, and he is a registered professional engineer. (Tr. at 414-415).

Mr. Morris testified that he reviewed the report made by Complainant's witness, Paul Hansen, dated January 23, 2015. Mr. Morris stated that the report seemed speculative. He stated that the diagram attached to Mr. Hansen's report showing his proposed experiment is not an engineering design because it does not have the level of detail expected in a real engineering design. Mr. Morris stated that the diagram does not have any meter symbol on it that he is familiar with seeing, and he stated that the diagram does not have the current path that Mr. Hansen is proposing as the explanation for what is happening at the Property. (Tr. at 415-417).

Mr. Morris also testified that if he were evaluating the experiment on behalf of ComEd, he would not approve it because there is not enough detail to allow ComEd to make a meaningful

evaluation of the results. (Tr. at 417). He stated that if there was a problem at all with the ground currents at the Property, the problem would be on the customer's side of the meter. (Tr. at 420).

## **CONCLUSIONS**

Complainant has the burden of proving the allegations in his complaint by a preponderance of the evidence. *Scott v. Dept. of Commerce and Community Affairs*, 84 Ill. 2d 42, 53 (1981); 5 ILCS 100/10-15. Respondent has the burden of proving by a preponderance of the evidence that tampering occurred. 83 Ill. Admin. Code § 280.200(b).

Complainant alleged that ComEd wrongfully charged it for service at the Property and that the meter was not accurately read. (Complaint at 1). Complainant has failed to provide any evidence that it was wrongfully charged for service or that any meter at the Property was not read correctly. Indeed, Complainant's entire case in chief is based on speculation and hearsay.

The testimony of Complainant's witness Paul Hansen is entirely speculative. Moreover, his admissions on cross-examination are telling. First, Mr. Hansen admitted that the only time he had ever been to the Property was in June of 2014. (Tr. at 340). He admitted that he had no first-hand knowledge of whether there was a jumper between the A and C phase of the meter. He admitted that he has never investigated a meter tampering case. (Tr. at 341-342). He further admitted that he is not an expert on ComEd meters or billing and that he has never examined how ComEd back-bills customers. (Tr. at 341). He admitted that since he "was never given data prior to April 2011" he "could not prepare a valid statistical analysis." (Tr. at 343). He admitted that at the time that he created his graph (Complainant's Exhibit 2), he did not know that the appearance of flattened usage between April 2012 and May 2013 was due to ComEd's back-billing. (Tr. at 344). He admitted that he had no opportunity to make an independent evaluation as to what was going on at the store in the years prior to his visit in June of 2014. (Tr. at 349).

In sum, Mr. Hansen is not an expert on ComEd meters or billing, and he has no first-hand knowledge of anything that occurred at the Property prior to June of 2014. Complainant filed its Complaint on September 24, 2013. Mr. Hansen's entire testimony is based on his mere speculation that somehow Complainant's metered usage is irregular due to "circulating ground currents." (Tr. at 338). Yet he did not present any proof that his theory is correct. Rather, he merely presented testimony and a research proposal for which he wanted ComEd to pay to prove through experimentation. (Tr. at 346-347). In other words, Mr. Hansen did not present any actual proof of anything at all. The testimony of ComEd's rebuttal witness, Andrew Morris, supports this conclusion.

Likewise, Complainant witness Saed Mohamad's entire testimony is either irrelevant or based on hearsay, and it is otherwise incoherent and contradictory at every turn. At various times during his testimony, he stated that a particular cooler was removed from the Property in January of 2013 (Tr. at 362), August or November of 2011 (Tr. at 385-388), and August and November of 2012 (Tr. at 388). He changed his testimony several times after leading questions by Complainant's counsel and by testimony from Complainant's counsel (see, e.g., the following statements by counsel: "[Mr. Mohamad's] dates were wrong, judge" (Tr. at 385); "[Mr. Mohamad's] dates were obviously wrong" (Tr. at 386)).

Similarly, at various times during his testimony, Mr. Mohamad stated that he received a bill and letter with a \$500 miscellaneous charge from ComEd in February or March of 2013 (Tr. at 364), May of 2013 (Tr. at 383), and April or May of 2012. (Tr. at 384). He testified that that he did not know what the \$500 charge was or that there was any allegation of tampering until he called ComEd (Tr. at 364-365) despite the fact that this statement is contradicted by the Complaint itself, which has an attachment containing a letter from ComEd explaining the tampering charge

of \$545.23 dated April 18, 2013.

Mr. Mohamad's testimony includes other inconsistencies as well. He could not seem to pin down a date for when he did not receive bills and when he did not pay the bills. At various times during his testimony, he stated that he did not receive bills in March, April, and May of 2013 (Tr. at 378), May or June of 2013 (Tr. at 390), and during the four or five months after the Complaint was filed in September of 2013 (Tr. at 390-391). Likewise, he stated that he has been paying his bills for a year and a half or two years. (Tr. at 391-392). Then he testified that he is not familiar with the payment of the bills because a person named Connie was making them. (Tr. at 392). Later, he stated that both he and Connie were making the payments. (Tr. at 399).

In sum, Mr. Mohamad's testimony does nothing to prove Complainant's case. Not only is the testimony completely inconsistent and untrustworthy, but it also fails to prove that ComEd's billing was improper or that the meters at the Property were not read properly.

By contrast, ComEd's evidence that there was tampering at the Property and that Complainant's billing was proper is overwhelming. Walter McCann's testimony that in December of 2012 he observed a jumper cable between the A and C phase of the meter causing it to run backward at the Property (Tr. at 94-148) was not contradicted by any other evidence. Moreover, Frank Lopez's testimony about the tampering that occurred with the meter (Tr. at 176-195) was not contradicted by any other evidence. Demon Page's testimony that on June 4, 2014 he observed that the meter had no forward rotation (Tr. at 151) is consistent with Mr. Lopez's testimony that the meter's current sensor was unplugged from the circuit board on the meter, causing it not to show kilowatt usage. (Tr. at 179-180). ComEd has met its burden of proving by a preponderance of the evidence that there was tampering with the meter before and after the Complaint was filed and that Complainant benefitted from it.

Additionally, ComEd's evidence shows that Complainant was properly rebilled for previously unbilled usage once ComEd discovered the tampering. Alexis Bullard's testimony regarding the rebilling was supported by ComEd's business records and shows that the billing was correct and consistent with subsequent billing for service at the Property. (Tr. at 202). The evidence is clear that as of December 2014, Complainant's balance on its account was \$73,522.66.

In conclusion, after taking into account all of the evidence presented, Complainant's electric service charges are proper and the complaint must be denied. Complainant has not provided any evidence whatsoever that ComEd's billing is in any way incorrect or that the meters at the Property were not properly read. To the contrary, ComEd has provided substantial evidence that Complainant benefitted from tampering and was properly rebilled for services once the tampering was discovered.

Complainant is not entitled to any credits on its electric bill. Complainant owes ComEd the entire amount currently due on the account, which was over \$73,000 in December of 2014. Whether on a factual or legal basis, Complainant has not sustained its burden of proof.

Wherefore, the Respondent, Commonwealth Edison Company, respectfully requests that the Complaint filed on September 24, 2013 be denied.

Respectfully submitted,  
Commonwealth Edison Company

By: /s/ Rebecca A. Graham

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**CERTIFICATE OF SERVICE**

I, Rebecca A. Graham, an attorney, certify that a copy of the foregoing RESPONDENT'S INITIAL BRIEF was served on the following parties by U.S. Mail and/or electronic transmission on June 1, 2015.

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